

65 – INDEPENDENT AGENCIES – REGULATORY

407 – PUBLIC UTILITIES COMMISSION

CHAPTER 325 – COMMUNITY-BASED RENEWABLE ENERGY PILOT PROGRAM

**SUMMARY:** This Chapter establishes requirements, standards and procedures to implement the community-renewable energy pilot program.

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## §1 PURPOSE

The purpose of this Chapter is to implement the State's policy to encourage the sustainable development of community-based renewable energy in Maine through the establishment of a pilot program.

## §2 DEFINITIONS

A. Community-Based Renewable Energy Project. "Community-based renewable energy project" means a locally owned electricity generating facility that generates electricity from an eligible renewable resource.

B. Consumer-Owned Transmission and Distribution Utility. "Consumer-owned transmission and distribution utility" has the same meaning as specified in Title 35-A, section 3201(6).

C. Eligible Renewable Resource. "Eligible renewable resource" means a renewable resource as defined in Title 35-A, section 3210, subsection 2, paragraph C, except that "eligible renewable resource" does not include a generator fueled by municipal solid waste in conjunction with recycling and does include a generator fueled by landfill gas. "Eligible renewable resource" includes a biomass generator whose fuel includes anaerobic digestion of agricultural products, byproducts or wastes.

D. Financial Transaction. "Financial transaction" means a contractual arrangement between a program participant and a transmission and distribution utility in which money is exchanged among the contracting parties, rather than a physical delivery of the capacity and energy commodity, and which results in the same or similar financial consequences as a physical transaction.

E. Installed Generating Capacity. "Installed generating capacity" means the nameplate capacity of a community-based renewable energy project that is under a contract with a transmission and distribution utility pursuant to section 6 of this Chapter or is obtaining a renewable energy credit multiplier pursuant to section 7 of this Chapter.

F. Investor-Owned Transmission and Distribution Utility. "Investor-owned transmission and distribution utility means either a large investor-owned transmission and distribution utility as specified in Title 35-A, section 3201(12) or a small investor-owned transmission and distribution utility as specified in Title 35-A, section 3201(16).

G. ISO-NE. "ISO-NE" means the Independent System Operator of the New England bulk power system or successor organization.

H. Locally Owned Electricity Generating Facility. "Locally owned electricity generating facility" means an electricity generating facility at least 51% of which is owned by one or more qualifying local owners.

I. NMISA. "NMISA" means the Northern Maine Independent System Administrator or successor organization.

J. Program Participant. "Program participant" means a community-based renewable energy project that is participating in the community-based renewable energy pilot program established in Title 35-A, section 3603.

K. Qualifying Local Owner. "Qualifying local owner" means a person or entity that is:

1. An individual who is a resident of the State;
2. A political subdivision of the State, including, but not limited to, a county, municipality, quasi-municipal corporation or district as defined in Title 30-A, section 2351, school administrative unit as defined in Title 20-A, section 1, public or private institution of higher education, regional council of governments or any other local or regional governmental organization, including, but not limited to, a board, commission or association;
3. A department, agency or instrumentality of the State;
4. A federally recognized Indian tribe located in the State;
5. A nonprofit corporation, organized under the laws of the State, including a unit owners association organized under Title 33, section 1603-101; or
6. A business corporation, organized under the laws of the State, at least 51% of which is owned by one or more residents of the State.

L. Renewable Energy Credit. "Renewable energy credit" means an electronic record produced by the NEPOOL Generation Information System that represents attributes of electric power and that may be traded separately from the energy commodity.

### **§ 3 PILOT PROGRAM CAPACITY LIMITS**

A. Total Program Capacity Limit. The total installed generating capacity of all program participants in the pilot program combined may not exceed 50 megawatts.

B. Project Capacity Limit. The installed generating capacity of a program participant may not exceed 10 megawatts.

C. Service Territory Capacity Limit. The total installed generating capacity of program participants within the service territory of a single investor-owned transmission and distribution utility may not exceed 25 megawatts, unless a higher installed capacity limit is authorized by the utility and approved by the Commission.

D. Utility Territory Specific Capacity Limit. Unless the Commission determines otherwise by order based on program experience, the total installed generating capacity limit of program participants located within the service territory of an investor-own utility is as follows:

1. Central Maine Power Company. The total installed generating capacity limit of program participants located within the service territory of Central Maine Power Company is 25 megawatts.

2. Bangor Hydro-Electric Company. The total installed generating capacity limit of program participants located within the service territory of Bangor Hydro-Electric Company is 11 megawatts.

3. Maine Public Service Company. The total installed generating capacity limit of program participants located within the service territory of Maine Public Service Company is 4 megawatts.

E. Consumer-Owned Utilities; Small Generators. Unless the Commission determines otherwise by order based on program experience, the total installed generating capacity limit of program participants that are either located within the service territory of a consumer-owned utility or have an installed generating capacity of less than 100 kilowatts is 10 megawatts.

F. Renewable Energy Credit Multiplier. The total installed generating capacity of program participants that receive the renewable energy credit multiplier incentive under section 7 of this Chapter may not exceed 10 megawatts.

#### § 4 PILOT PROGRAM ELIGIBILITY

A. Criteria. To be eligible to participate in the pilot program, a generating project must satisfy the criteria in this subsection.

1. Community-Based. The project must be a community-based renewable energy project as defined in section 2 of this Chapter.

2. Local Support. The project must have local support as specified below.

a. Municipality. A resolution of support passed by the municipal legislative body or municipal officers acting to state an official position of the municipality, as appropriate, of the municipality in which the community-based renewable energy project is proposed to be located, except that any project that is proposed to be located wholly in an unorganized or deorganized area of the State or that has a generating capacity of less than 100 kilowatts is exempt from this requirement.

b. Tribal land. A documentation of tribe support for a project proposed to be located on the tribal land or territory of a federally recognized Indian tribe in Maine, including any land owned by the tribe or held in trust by the United States for the tribe.

3. Interconnection. The project must be interconnected to Maine's electric grid.

4. In-Service. The project must have an in-service date after September 1, 2009.

B. Commission Certification. To be eligible to participate in the pilot program, a generating project must be certified by the Commission as a community-based renewable energy project.

1. Process. An owner or developer of a generating project may seek Commission certification through the submission of a petition for certification as a community-based renewable energy project. The Commission shall by order either certify the generation project as a community-based renewable energy project or state the reasons for the denial of the certification within 90 days of the submission of a complete application, unless the Commission determines that additional time is required.

2. Petition. The petition for certification as a community-based renewable energy project must include the following information:

a. Name, address, phone number and e-mail address of petitioner;

b. Location or proposed location of the project;

c. Description of the community-based renewable energy project; including fuel type, nameplate capacity, interconnection point, and initial or expected in-service date;

d. A list of the names and addresses of all owners of the project, percentage ownership of each owners, and documentation as to whether owners are qualifying local owners as defined in section 2 of this Chapter;

e. Documentation of a resolution of support passed by the municipal legislative body or municipal officers, as appropriate, of the municipality in which the community-based renewable energy project is proposed to be located, if required by section 4(A)(2);

f. Documentation of tribal support if required by section 4(A)(2);

- g. Documentation of applicant control over the proposed facility site;
- h. Documentation of financial capability to develop the community-based renewable energy project;
- i. Documentation of technical capability and experience to develop the community-based renewable energy project;
- j. Demonstration that the community-based renewable energy project is reasonable likely to be in-service within three years of certification;
- k. The program incentive that the project anticipates choosing pursuant to section 5 of this Chapter; and
- l. Any other information that the Commission determines to be necessary or useful.

3. Finding. The Commission may certify a project only upon a finding that the project satisfies the eligibility requirements of this section and is reasonably likely to be in-service within three years of certification.

4. Termination. Commission certification of a generating project as a community-based renewable energy project shall terminate if the generating project is not in-service within three years of certification.

## **§ 5 PILOT PROGRAM INCENTIVES**

A program participant may elect one of the two pilot program incentives specified in this section.

A. A long-term contract pursuant to the provisions of section 6 of this Chapter; or

B. A renewable energy credit multiplier pursuant to the provisions of section 7 of this Chapter.

A program participant may not change its choice of a program incentive during the term of a long-term contract entered into pursuant to the provisions of section 6 of this Chapter. A program participant may choose a long-term contract subsequent to a electing the option of a renewable energy credit multiplier. A program participant may not elect to participate in the two pilot program incentives at the same time. A program participant must notify the Commission of its election of a program incentive and any subsequent change to the program incentive choice.



## §6 LONG-TERM CONTRACTING

A. Commission Authority. The Commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity or renewable energy credits. The contract may be for physical delivery of the products or may be a financial transaction.

B. Participant Option. The program participant has the option to sell capacity or renewable energy credits to the transmission and distribution utility. A long-term contract under this section must include either all or a specified percentage of the energy output of the eligible renewable resource. In the event a program participant is not receiving value for capacity or renewable energy credits, the Commission may direct the program participant to transfer the capacity or renewable energy credits to the transmission and distribution utility if the Commission finds that the capacity or renewable energy credits is reasonably likely to have value for ratepayers without creating an undue administrative burden.

C. Large Generators. For program participants with a generating capacity of one megawatt or more, the Commission shall conduct competitive solicitations for long-term contracts as specified in this sub-section.

1. Periodic Solicitations. The Commission shall periodically conduct a competitive bid process for community-based renewable energy projects. To participate in the bid process, a program participant must be certified by the Commission pursuant to section 4 of this Chapter. The Commission shall not conduct bid processes if the applicable pilot program capacity limits specified in section 3 are reached or if there are no certified community-based renewable energy projects that are not already participating in the long-term contract program incentive pursuant to section 6 or the renewable energy credit multiplier program incentive pursuant to section 7.

2. Requests for Proposals; Standard Form Contracts. The Commission shall solicit bids for community-based renewable energy projects through the issuance of a request for proposals that contains all the standards, procedures and requirements for the bid solicitation process. The request for proposals shall contain a standard form contract. As part of the solicitation and selection process, the Commission may accept modifications to the standard form contracts. The Commission delegates to the Director of the Electricity and Gas Utility Industries the authority to develop and approve the requests for proposals and the standard contract, and to accept modifications to the standard form contract. The request for proposals shall, at a minimum, require that the proposals contain the proposed pricing terms, full project cost disclosure, expected revenue sources in addition to the long-term contract, and the Commission order certifying the project as a community-based renewable energy project pursuant to section 4 of this Chapter.

3. Evaluation of Proposals; Bidder Negotiations. The Commission shall evaluate submitted proposals to determine compliance with the standards, procedures and requirements contained in the request for proposals. Following review of proposals, the Commission may engage in negotiations or discussions with bidders or a subset of bidders to clarify, refine or improve the proposals. At the direction of the Commission, the applicable transmission and distribution utility shall participate in bid evaluations or negotiations. The Commission may accept one or more of the proposals or none of the proposals based on its assessment of whether proposals meet the requirements of the request for proposals and this Chapter.

4. Selection Criteria. The Commission will select proposals that are certified pursuant to section 4 of this Chapter, satisfy the requirements of the request for proposals of subsection C(2) and meet the cost containment provisions of subsection E. In considering the cost containment requirement, the Commission will take into account revenue the program participant will likely receive if capacity resource or renewable energy credits are not sold to the transmission and distribution utility. In the event the proposals exceed the applicable pilot program capacity limits, the Commission will select proposals that provide the lowest net cost to ratepayers over the term of the proposed contract.

D. Small Generators. For program participants with an installed generating capacity of less than one megawatt, the Commission shall establish contract prices and terms as specified in this subsection.

1. Contract Prices. Until changed by Commission order, the contract prices for small generators shall be as specified in this paragraph.

a. Wind Power Installations. The contract price for wind power installations shall be 10 cents per kilowatt-hour. Unless the Commission states otherwise by order, the price per kilowatt-hour in the contract may not vary.

b. Solar Arrays and Installations. The contract price for solar arrays and installations shall be 10 cents per kilowatt-hour. Unless the Commission states otherwise by order, the price per kilowatt-hour in the contract may not vary.

c. Hydroelectric Installations. The contract price for hydroelectric facilities shall be 10 cents per kilowatt-hour. Unless the Commission states otherwise by order, the price per kilowatt-hour in the contract may not vary.

d. Other Renewable Resources. The Commission will establish prices for eligible renewable resources other than wind power installations and solar arrays and installations at the request of a community-based renewable energy generator that has been certified by the Commission pursuant to section 4 of this Chapter.

2. Process. To obtain a long-term contract under this subsection, a program participant must provide to the applicable transmission and distribution utility a

copy of its certification under section 4 of this Chapter and a statement as to contract term desired. The applicable transmission and distribution shall provide the program participant with a standard contract for execution. The Commission delegates to the Director of the Electricity and Gas Utility Industries the authority to develop and approve the standard form contract, and to accept modifications to the standard form contract. The transmission and distribution utility shall provide a copy of the executed long-term contract to the Commission.

E. Cost Containment. The average price per kilowatt-hour within each contract year shall not exceed 10 cents and the cost of the contract will not exceed the cost of the project plus a reasonable rate of return on investment as determined by the Commission.

F. Contract Term. A program participant may choose the contract term up to a maximum term of 20 years. A chosen contract term may not result in a violation of the cost containment provision in section 6(E) of this Chapter.

G. Contract Termination. A contract entered into pursuant to this section shall terminate if the community-based renewable energy project is not in-service within three years of the execution of the contract or if the project ceases operation for a six-month period after the initial service date.

H. Contract Administration. The transmission and distribution utility shall be responsible for administering contracts entered into pursuant to this section.

I. Contract Payments. Contracts for capacity and energy entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity and associated energy have been provided.

J. Commercial Reasonableness. Contracts entered into pursuant to this section shall be commercially reasonable and commit all parties to commercially reasonable behavior.

K. Interconnection Requirements. A program participant must comply with all interconnection, safety and reliability requirements of the transmission and distribution utility applicable to the community-based renewable energy project.

L. Disposition of Resources. At the direction of the Commission, investor-owned transmission and distribution utilities shall:

1. dispose of contracted resources through periodic auctions supervised by the Commission, which may occur in conjunction with solicitations for standard offer supply bids under Title 35-A, section 3212 or solicitations for green power bids under section 3212-A; or

2. use the contracted resources to meet the supply requirements of Maine ratepayers; or

3. take other action relative to contracted resources as determined by Commission rule or order.

M. Cost Recovery. A transmission and distribution utility may recover in rates all prudent costs of contracts entered into under this section, including but not limited to any effects on the utility's costs of capital and costs of contract administration. A price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the energy is sold must be reflected in rates and may not be considered to be imprudent.

N. Commission Notification. The program participant must notify the Commission of the in-service date of the community-based renewable energy project or if the project ceases or substantially reduces operation for a six month period after the initial in-service date.

O. Consumer-Owned Transmission and Distribution Utilities. A consumer-owned transmission and distribution utility may, at the option of the utility, enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity or renewable energy credits in accordance with this section.

## **§7 RENEWABLE ENERGY CREDIT MULTIPLIER**

A. Value. For purposes of Maine's portfolio requirements of Title 35-A, section 3210, subsections 3 and 3-A, the value of renewable energy credits associated with the generation from a community-based renewable energy project located in the ISO-NE area or the energy of a community-based renewable energy project located in the NMISA area is 150% of the amount of the generated electricity.

B. Commission Notification. A program participant must notify the Commission that it has elected the renewable energy credit multiplier. A program participant located in the ISO-NE area must notify the Commission that it has made arrangements to obtain renewable energy credits from the NEPOOL Generation Information System. A program participant must notify the Commission of the in-service date of the community-based renewable energy project or if the project ceases or substantially reduces operation for a six month period after the initial in-service date. A community-based renewable energy project that ceases operation for a six-month period will not be considered as obtaining the renewable energy credit multiplier incentive under this section.

## **§8 WAIVER OR EXEMPTION**

Upon request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the

purposes of this Chapter or Title 35-A. The Commission, the Director of Electric and Gas Utility Industries, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

## **§9 REPEAL**

This Chapter is repealed on December 31, 2015, unless the Legislature extends the community-based renewable energy pilot program.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission's Order Adopting Final Rule, Docket No. 2009-363, issued on January 27, 2010. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

**AUTHORITY:** 35-A M.R.S.A. §§ 104, 111, 3602-3606.

**EFFECTIVE DATE:** This rule was approved as to form and legality by the Attorney General on February 4, 2010. It was filed with the Secretary of State on February 8, 2010 and became effective on February 13, 2010.

